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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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		EXAMINER		
		QUINN, RICHARD LEE		
		ART UNIT		
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		3765		
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/544,094

Applicant(s)

SORENSEN, BETTINA BALSLEV

Examiner

RICHALE L. QUINN

Art Unit

3765

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 January 2011.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11, 13, 16-18 and 20-24 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-11, 13, 16-18 and 20-24 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01 August 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-946)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 1/18/2011 has been entered.
2. Claims 1 – 4, 9, 16, 18, 20, 21, 23 and 24 were amended. Claims 8, 12, 14, 15 and 19 were cancelled. Currently, claims 1-7, 9-11, 13, 16, 18 and 20 - 24 are currently pending.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
4. Claims 1-7, 9-11, 13, 16, 18, and 20-24 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. For claims 1 and 9, Applicant claims "the elastic yarns having a thickness of 100-300 dtex, with a higher percentage." Applicant has not specified what the percentage is higher than, higher is a relative term and is not understood without a comparison to another claimed element.
5. Claim 9 recites the limitation "the" in reference to "the previously selected hernia compression area." There is insufficient antecedent basis for this limitation in the claim.

Applicant recites a pre-selected compression area. It is unclear what area the applicant is referring to.

Claim Objections

6. Claims 20 and 22 are objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim.

Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. Claim 20, applicant recites the elastic yarn having a thickness of 100-350 dtex, this limitation is recited in the independent claim. Claim 22, is essentially the same claim language as claim 21 since the "preselected compression area" and the "abdominal front portion areas" are the same area with a weight per square meter between 250 and 450 g/m².

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 1 – 4, 6-7, 9- 11, 13, 15-18, and 20-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Browder, Jr. (US 5,572,888). The device of Browder, Jr. discloses a clothing article capable of being worn by a person having an ostomy hernia, the clothing article is made with a previously selected hernia compression area

at the abdominal portions (24) located on the front half (Figure 1) of the garment for exerting compression (Column 2, lines 13-15) to the abdominal region and is intended to be disposed around the lower portion of the body, the clothing article is characterized by knitting a seamless tubular (column 1, lines 60 - 64) which is made with an anatomic fit in a predefined size and shape and establishing a firm, elastic (Column 2, lines 19-21) structure. The device of Browder, Jr. is made on a body size electric circular knitting machine (Column 1, lines 60-61) and is selectively fixed on the machine form having a predetermined size and shape as the item is being constructed and is sewn together forming a panty brief with a lower body area, groin area and leg openings (Column 3, lines 56-61) capable of being fixated on a form. The extension of the garment is performed with varying intensity (Column 3, lines 46-50) for establishing varied extension or elasticity and firmness in the article giving varied compression when the clothing article is placed on the body. The device of Browder, Jr. discloses elastic yarns present in the apparel apparatus comprising 70 denier Lycra yarn covered with 70 denier 46 filament covered yarn, and a second two ply nylon yarn of 60 denier 68 filament (Column 3, lines 64-67), and therefore it can be determined that the elastic fibers equals approximately 50% by linear weight in the front abdominal region for exerting compression on the wearer. The groin area (22) is free from elastic yarns, therefore having 0% elastic yarns (Column 1, lines 66-67 and Column 3, lines 27-34). The elastic yarns in the previously selected hernia compression area at the wearer's abdomen are higher than the non elastic groin portion. The abdominal area (24) is formed with fixed elastic yarns (Column 3, line 64) that is not found in other areas of the

garment thereby creating varied elastic firmness and compression (Column 2, lines 2-5 and Column 4, lines 1-2) in the abdominal region when placed on a user to provide an anatomical fit. The elastic yarns described in Column 3, lines 64 - 67 are found only in the abdominal region (24) at the front of the garment. It is noted that the recitation "for producing compression of between 15 to 50 mmHg" is a functional recitation. The device of Browder, Jr meets all the structural limitations claimed by applicant and is therefore interpreted to perform in the same manner as the claimed apparatus having a compression of between 15 – 50 mmHg and would have a material that displays a force/elongation curve including a largely flat curve pattern as recited by applicant. With regard to applicant's recitation requiring that the sewing together of the groin area is done before the fixation of the panty brief on a form, it is noted as a product by process limitation and is not given patentable weight. It is noted that the order in which this step occurs is irrelevant to the finished device. The device of Browder, Jr. discloses an end product having groin area (26) and tubular item (22) sewn together at one end (Column 3, line 56) forming a panty brief with lower body part, groin area and leg openings (Figure 2). The device is made by a circular knitting machine (Column 3, 18 -24) and is capable for production on either a body size machine or rectilinear machine with two needle bars. The device of Browder, Jr. discloses a garment having elastic yarns in an abdominal front region (12) having a thickness of 100 to 350 decitex or 150 - 250 decitex (Column 4, line 5) located on the front half of the garment in areas (12) exerting compression on the user. It is noted that a 140 denier yarn is the equivalent to a 155.6 decitex yarn. The preselected hernia compression area has a compact knitted structure

and a firm, tight stitch pattern (Figure 5). The device of Browder, Jr. substantially discloses the claimed invention but is silent as to the weight per square meter of compression on the user's body. The USPTO office does not have a laboratory to perform testing, and since the device of Browder, Jr. meets all of the structural recitations as claimed by applicant, it is interpreted to perform the function of compression in the same manner as the claimed invention, at a weight per square meter of between 250 and 450g/m². The applicant does not provide criticality in the specification to the specific ranges claimed and therefore the prior art referenced meets the cited limitations.

9. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Browder, Jr. in view of Sinigagliesi (US 2,736,036). The device of Browder, Jr. substantially discloses the claimed invention but is lacking a groin area having an aperture. The device of Sinigagliesi discloses a tubular knit garment having an aperture (13) in the groin area. It would have been obvious to a person having ordinary skill in the art at the time the invention was made to modify the device of Browder, Jr. by utilizing the aperture taught by Sinigagliesi in order to provide access to the genitals from the exterior surface of the garment (column 2, lines 55 – 68).

Response to Arguments

Applicant's arguments filed 1/18/2011 have been fully considered but they are not persuasive.

10. Applicant states that the elastic yarns not found in other areas of the garment is not in keeping with Browder's inelastic nylon yarns. Browder discloses heavy elastic

yarns for additional compression in the abdominal region that are found only in the abdominal region as claimed by applicant. The heavier yarns used in the control area are the lycra and nylon yarns for compression and control of the abdominal region (Column 4, lines 64-68).

11. Applicant states that Browder is lacking elastic yarns having 100-300 or 100-250 dtex. Browder discloses a 140 denier yarn, this the equivalent to a 155.6 decitex yarn. The device of Browder, Jr. discloses a garment having elastic yarns in an abdominal front portion (Column 4, line 5). Applicant argues that Browder is lacking an article extended on a heat fixed form. It is noted that this limitation is a product-by-process limitation and is not given patentable weight. Applicant argues that the lower area of Browder is not sewn to form a panty. Browder discloses that element 22 is sewn to the lower back portion to form a panty (Column 3, lines 56- 57). Applicant argues that Browder fails to disclose the item being formed on a circular knitting machine, this is also a product-by-process limitation; however, a circular knitting machine is disclosed in Column 1, line 60. Applicant argues that Browder fails to disclose a higher percentage of elastic yarns in the compression area. The device of Browder discloses elastic yarns forming the compression area and absent from the remainder of the garment, and therefore the percentage of elastic yarns would be higher in the compression area. Applicant argues that the fabric has an elongation curve including a largely flat curve pattern. Browder, Jr meets all the structural limitations claimed by applicant and is therefore interpreted to perform in the same manner as the claimed apparatus having a compression of between 15 – 50 mmHg and would have a material that displays a

force/elongation curve including a largely flat curve pattern as recited by applicant.

Applicant argues that Browder, Jr. fails to disclose elastic yarns comprising 30-50% of the compression area. Browder, Jr. discloses elastic yarns present in the apparel apparatus comprising 70 denier Lycra yarn covered with 70 denier 46 filament covered yarn, and a second two ply nylon yarn of 60 denier 68 filaments (Column 3, lines 64-67). When calculating the linear weight of these yarns, it can be determined that the elastic fibers equal approximately 50% by linear weight in the front abdominal region for exerting compression on the wearer. Applicant argues that Browder, Jr. fails to disclose the weight per square meter of the fabric. The applicant does not provide criticality in the specification to the specific ranges claimed. The device of Browder, Jr. discloses all of the structural limitations of the claimed invention and therefore is interpreted to perform in the same manner as the claimed invention.

12. Applicant argues that the combination of Browder, Jr. and Sinigagliesi is improper since the opening is not found in the groin area that is sewn together. It is noted that Browder, Jr. is relied upon to show that the groin area is sewn to the tubular garment. The device of Sinigagliesi is relied upon to show that an aperture in the fly/groin area is known. The combination meets the limitations as recited when interpreted in the broadest reasonable sense.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to RICHALE L. QUINN whose telephone number is (571)272-8689. The examiner can normally be reached on M-F 8:00 - 4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Welch can be reached on 571-272-4996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Richale L Quinn
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